

REMARKS

I. PRELIMINARY REMARKS

Minor amendments have been made to the specification and drawings. Claims 1-31 have been canceled. No claims have been amended. Claims 32-56 have been added. Claims 32-56 remain in the application. Reexamination and reconsideration of the application, as amended, are respectfully requested.

Applicant wishes to thank the Examiner's supervisor, Ms. Cynthia Kelly, for the courtesy of a telephonic interview conducted with the undersigned representative on August 3, 2004.¹ During the interview, Ms. Kelly explained that the Examiner objected to the previously presented version of claims 32-56 because the phrase "battery unit" was not preceded by the phrase "portable disposable" in the preamble of some of the claims and the body some of the claims, as was the case in many of the originally presented claims. Accordingly, in order to obviate this issue, applicant has included the phrase "portable disposable" before the phrase "battery unit" as appropriate in the version of claims 32-56 presented herein.²

Ms. Kelly also indicated that the minor amendments to the specification and drawings did not appear to be "new matter" and suggested that applicant provide additional explanation to facilitate the Examiner's understanding of the amendments. Accordingly, the amendments to the specification and drawings are discussed in detail in Section II below.

¹ Applicant notes for the record that the Examiner refused to conduct a telephonic interview with applicant's undersigned, California-based representative.

² Applicant notes for the record that the modified version of claims 32-56 has been presented solely in order to advance prosecution of the present application. To the extent that the Examiner was attempting to communicate that the prior version of the claims was objectionable under 35 U.S.C. §§ 112 and/or 132, the modifications to the claims are not an acquiescence to such an objection and applicant hereby reserves the right to pursue the prior version of claims 32-56 in a continuation application.

Finally, applicant notes that paragraph IV of the Office Action included statements concerning patent litigation and applicant's potential for success therein. Applicant respectfully submits that such statements are entirely inappropriate and hereby requests that the Examiner limit his statements to issues within the scope of his responsibilities as a patent Examiner, e.g. the application of the laws set forth in Chapters 10-12 of Title 35 of the United States Code and the rules set forth in Title 37 of the Code of Federal Regulations.

II. AMENDMENTS TO THE SPECIFICATION AND DRAWINGS

Minor amendments have been made to the specification in order to correct typographical errors and corresponding amendments have been made to the drawings.³ Clearly, no new matter has been added. Nevertheless, in order to facilitate the Examiner's understanding of the amendments, each correction is discussed in detail below.

In the last sentence of paragraph 00016, "fuel container 220" has been changed to "fuel-battery unit 220" in order to correct a typographical error. The Examiner's attention is directed to the fact that the phrase "fuel-battery unit 220" appears two other times in the same paragraph. Accordingly, the correction of the typographical error is not new matter.

Both instances of "chamber 220" have been changed to "chamber 225" in paragraph 00017 in order to correct a typographical error. More specifically, and as should be clear from paragraph 00016, reference numeral "220" was also used to represent the fuel-battery unit and a new reference numeral was required to represent the chamber. Thus, the use reference numeral 225 is not new matter.

Turning to Figure 2, the lead line associated with reference numeral 220 has been extended so as to point to the fuel-battery unit. The Examiner's attention is directed to paragraph 00016, which clearly indicates that the fuel-battery unit 220 is

³ The Examiner's attention is directed to MPEP § 2163.07-II, which states that "an amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of error in the specification, but also the appropriate correction." Citation omitted.

the device that includes the compartment 208 and the battery 204. Accordingly, the extension of the lead line thereto is not new matter.

Reference numeral 225 and a corresponding lead line have also been added to Figure 2. As discussed above, reference numeral 225 corresponds to the chamber. Paragraph 00017 clearly indicates that the lid 216 in Figure 2 provides access to the chamber and that the fuel-battery unit 220 is inserted into the chamber. One of skill in the art would certainly recognize that such a chamber was shown in Figure 2 as filed. The addition of a reference numeral (here, reference numeral 225) and a corresponding lead line to point to a structural element that was already shown in a figure is not new matter.

III. PRIOR ART REJECTIONS

Claims 1-31 have been rejected under 35 U.S.C. § 103 as being unpatentable over the combined teachings of the U.S. App. Pub. No. 2001/0052433 to Harris ("the Harris '433 publication"), U.S. Patent No. 5,976,725 to Gamo ("the Gamo '725 patent") and U.S. Patent No. 6,268,077 to Kelly ("the Kelly '077 patent"). As claims 1-31 have been canceled, applicant respectfully submits that the rejection under 35 U.S.C. § 103 has been rendered moot. Nevertheless, in order to advance prosecution, the patentability of the newly presented claims over these references is discussed in Section VI below.

IV. BRIEF DESCRIPTION OF EXEMPLARY EMBODIMENTS

The present inventions are generally related to a fuel-battery unit that may be used to supply fuel to a fuel cell and supply power, as needed, to an electrical load. As illustrated for example in Figure 2, a fuel-battery unit 220 in accordance with one embodiment of a present invention includes a container with two compartments – a fuel compartment 208 and a battery compartment for a battery 204. When the fuel-battery unit 220 is connected to the fuel cell system 200, fuel will flow out of the fuel battery unit container (i.e. the container that includes a compartment for fuel *and* a compartment for a battery) to the fuel cell. An electrical connection to the battery 204

will also be made. In the exemplary embodiment illustrated in Figure 2, the fuel and battery connection with fuel-battery unit 220 is made when the fuel battery unit is inserted into the chamber 225.

Turning to Figures 6A-6C, in another exemplary embodiment, the fuel-battery unit includes a container with a compartment for fuel 606 as well as a battery 608 carried by the container. The fuel-battery unit and fuel cell system balance of plant 604 are provided with respective sets of fuel connectors 610 and electrical contacts 612. So arranged, when the fuel-battery unit and fuel cell system balance of plant 604 are connected, the fuel cell stack 602 will receive fuel and the balance of plant 604 will be connected to the battery 608.

V. THE CITED REFERENCES

The Harris '433 publication is directed to a hybrid power supply module that may be used in place of a conventional battery. Referring to Figure 1, the power supply module 15 includes a battery 1 and a fuel cell 3 located within a common housing 2. Fuel for the fuel cell may be provided by a fuel supply that is located within the housing 2. [Paragraph 0029.] In other words, the battery 1, fuel cell 3 and fuel container (not shown) are all located within the same container, i.e. the housing 2.

The Gamo '725 patent and Kelly '077 patent disclose fuel cell systems that include fuel containers.

VI. NEWLY PRESENTED CLAIMS 32-57

Newly presented independent claim 32 calls for a combination of elements including, *inter alia*, "a fuel-battery **container including a fuel compartment** having fuel stored therein **and a battery compartment** having a battery stored therein" and "a fuel-battery unit fuel connector, operably connected to the fuel compartment, adapted to be connected to the system fuel connector such that fuel can flow **out of the fuel-battery container.**" In other words, fuel must leave a container that houses **both** the fuel and the battery in order to enter the fuel cell. Independent claims 36 and 43 call for, *inter alia*, related combinations of elements.

The Harris '433 publication fails to teach or suggest such combinations. For example, the only aspect of the Harris power supply module 15 that could arguably correspond to the claimed "container" is the housing 2 because, the separate compartment issue notwithstanding, the housing 2 holds both the fuel and the battery 1. In contrast to the claimed combinations, however, fuel does not exit the Harris housing 2 to enter the fuel cell 3 because the fuel cell is **located within** the housing 2. Applicant respectfully submits that there is nothing in the Gamo '725 patent and Kelly '077 patent to remedy this deficiency. Claims 32-49 are, accordingly, patentable thereover.

Independent claim 50 is directed to "a method of fueling an apparatus that includes a fuel cell and an electrical load connected to the fuel cell." The method comprises, *inter alia*, the step of "connecting a single fuel-battery cartridge that includes both fuel and a battery to the fuel cell and to the electrical load." The Harris '433 publication fails to teach or suggest such a combination. For example, the Harris power supply module 15 is not connected to a fuel cell. Instead, it **includes the fuel cell**. Applicant respectfully submits that there is nothing in the Gamo '725 patent and Kelly '077 patent to remedy this deficiency. Claims 50-53 are, accordingly, patentable thereover.

Finally, independent claim 54 calls for a combination of elements including, *inter alia*, "a fuel container including a fuel compartment having fuel stored therein" and "a battery carried by the fuel container." The Harris '433 publication fails to teach or suggest such a combination. For example, the Harris '433 publication, which merely alludes to a fuel supply in the power supply module 15, does not even remotely suggest mounting a battery on a fuel container. Applicant respectfully submits that there is nothing in the Gamo '725 patent and Kelly '077 patent to remedy this deficiency. Claims 54-56 are, accordingly, patentable thereover.

VII. CLOSING REMARKS

In view of the foregoing, it is respectfully submitted that the claims in the application are in condition for allowance. Reexamination and reconsideration of the

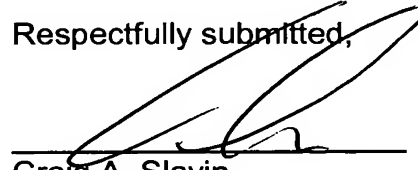
application, as amended, are respectfully requested. Allowance of the claims at an early date is courteously solicited.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is respectfully requested to call applicant's undersigned representative at (310) 563-1458 to discuss the steps necessary for placing the application in condition for allowance.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 08-2025. Should such fees be associated with an extension of time, applicant respectfully requests that this paper be considered a petition therefor.

8/4/04
Date

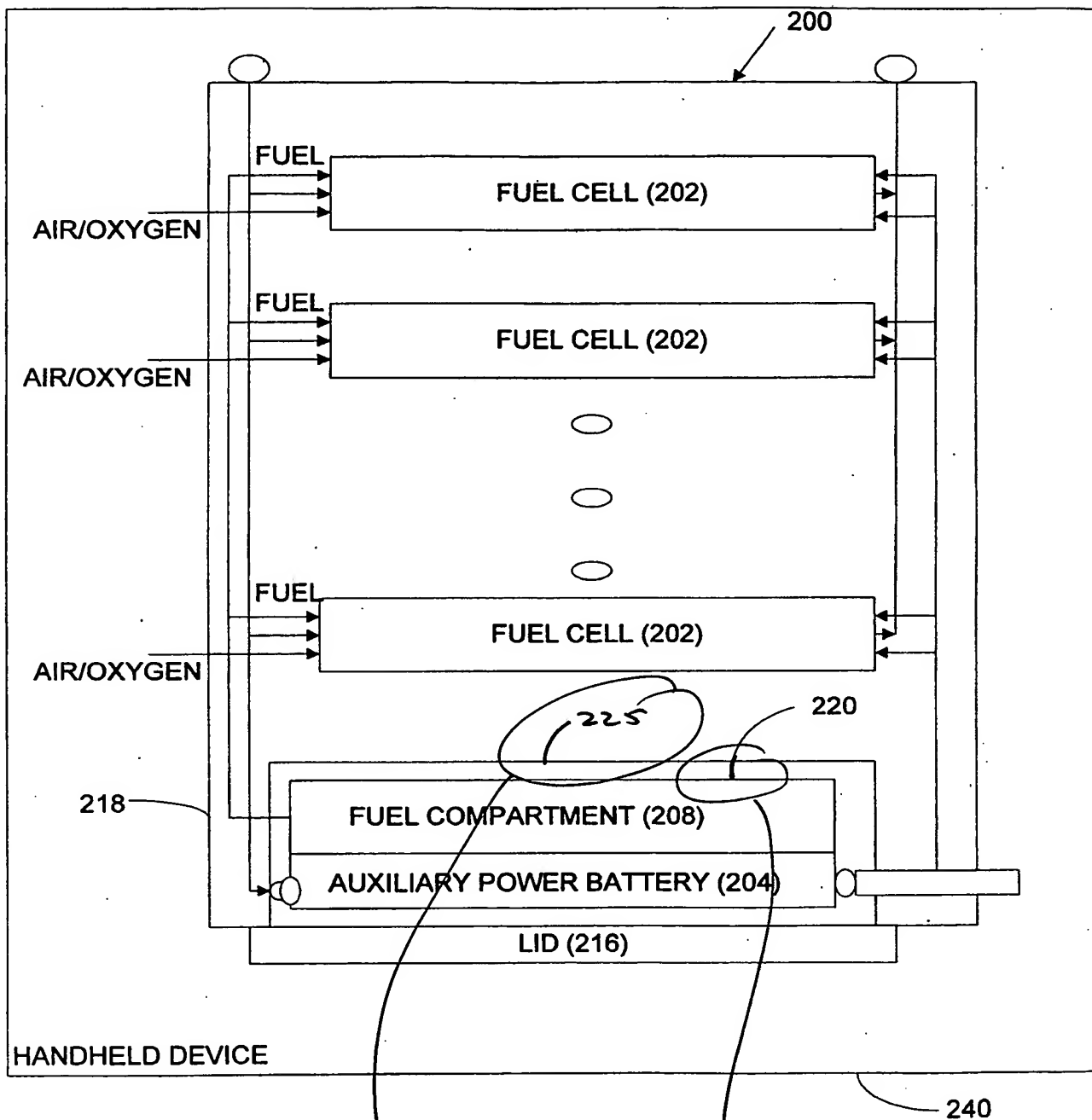
Respectfully submitted,


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ADDED

FIG. 2

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